S. B. CIVIL SECOND APPEAL NO.197/2004
(Shakuntala Devi & Others v. Shanti Lal)

Date of Order: : 09-01-2007

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. Sachin Acharya, for appellants.
Mr.Usman Gani, for respondent.

After going through the facts of the case, I do not find that any substantial questionof law is involved in this appeal. In view of the fact that the two courts below concurrently decided question of fact about the personal bona fide necessity of the plaintiff against the apellants-defendant-tenants and after going through the rent deed in question, this Court is also of the view that by that rent deed, new tenancy has not been created, but virtually that is a good piece of evidence for proving old tenancy for the premises. Therefore, even if the suit was filed within 5 years of the execution of the said rent deed, the suit for eviction of tenant was maintainable and was rightly decreed by the two courts below as the tenancy is proved to be old one and started before the subsequent deed executed during the currency of the tenancy between the parties. Therefore, the appeal deserves to be dismissed.

Learned counsel for the appellants submits that the property in dispute is commercial premises and they may be

granted reasonable time to vacate the suit premises. Learned counsel for the plaintiffs submitted that the plaintiffs have already taken on rent another premises.

In view of the fact of the case, it will be appropriate to grant time upto 30th June, 2007 to the appellants to vacate the suit premises.Therefore, it is ordered that in case the appellants furnish a written undertaking before the trial Court within a period of two months from today that they shall hand over the vacant possession to the landlord by or before 30th June, 2007 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decretal amount, if due, and cost of suit and cost of first appeal within a period of two months from today before the trial Court or directly to the landlord, the decree under challenge shall not be executed till 01.07.2007. The appellants shall also deposit the rent month by month by 15th day of each succeeding month of their tenancy in the trial Court or pay directly to the landlord.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

The appeal of the appellants is dismissed with above observations.

(PRAKASH TATIA), J.